IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 3840 of 1993
with
SPECIAL CIVIL APPLICATION No 12765 of 1993

For Approval and Signature:

Hon'ble MR.JUSTICE B.J.SHETHNA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

NEW BRAHMAKSHTREYA CO-OP. HSGSOCIETY LTD
Versus
STATE OF GUAJRAT

Appearance:
MR AK CLERK for Petitioner
MS SONAL VYAS, AGP for Respondent Nos. 1-3

CORAM : MR.JUSTICE B.J.SHETHNA

Date of decision: 01/08/2002

ORAL JUDGEMENT

1. The petitioner - Society has filed this petition under Article 226 of the Constitution of India and has prayed that the action of the respondents authorities in fixing, levying and collecting assessment charges under Rule 81 of Gujarat Land Revenue Rules, 1972 for the lands

belonging to the petitioner - Society after 1st August, 1981 be declared as null and void. It is also prayed in this petition that the respondents authorities be restrained from fixing, levying and collecting any assessment for the lands belonging to the petitioner Society for the assessment charges of the Year 1993-94 and onwards. It is also prayed that the respondents authorities be directed to refund the amount of assessment levied and collected from the petitioner Society in respect of the lands after 1st August, 1981 with interest. The last prayer made in this petition, cannot be granted for the reason that they have continued to pay till the filing of the petition in 1993.

2. However, there challenge can certainly be considered for the Year 1993-94 and onwards. In fact, while issuing notice on 22nd October, 1993, the learned single Judge of this Court, by way of interim order granted stay against the demand of land revenue in respect of the lands of the petitioner - Society for the Year 1993-94 and onwards.

3. Short question involved in this writ petition is as to whether the subject levy of nonagricultural assessment can be charged from the petitioner - Society, which is using the lands prior to 1981, in view of the proviso to Clause-3 of the Notification dated 21st January, 1982.

4. It is stated on oath that the petitioner Society is a registered Society since 1927. In support of the averments, the certificate [Annexure-A] of registration is produced. Thus, it is clear that the petitioner Society has been using the lands prior to 1981. The averments made on oath remain uncontroverted. When it is supported by the authentic documentary evidence like certificate issued by the Competent Authority, then the same has to be accepted.

5. Once, this Court has come to the conclusion that the petitioner - Society was using the lands prior to 1981, then proviso to Clause-3 of the notification dated 21st January, 1982 [Annexure-C] would come into play. As per the said proviso, where any lands situated in any town or city is already put to residential use before the 1st August, 1981, it shall not be liable to any assessment.

6. In view of the above, this petition is allowed. The respondents authorities are restrained from fixing, levying and collecting any assessment charged of the

lands belonging to the petitioner - Society, which is using prior to 1981 for the assessment Year 1993-94 and thereafter.

7. As stated earlier, prayer in para-13[C] regarding the refund of amount paid by the petitioner - Society from 1st August, 1981 till the filing of this petition with interest, cannot be granted, in view of the fact that the petitioner has made that payment voluntarily and without any objection. Therefore, there is no question of granting this prayer. The petitioner - Society waited for almost 12 years, after issuing the Notification. That apart the amount paid yearly by the petitioner Society to the respondents authorities is too meager. Therefore, there was no serious challenge to it by Mr.A.K.Clerk, learned advocate for the petitioner also.

8. Accordingly, this petition is allowed to the aforesaid extent only, as stated earlier. Rule is made absolute to the aforesaid extent.

[B. J. SHETHNA,J.]

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